section will inform the requestor (1) that the agency has determined at the present time to deny the request because the records have not yet been found or examined, but (2) that the agency will review the request within a specified number of days, when the search or examination is expected to be complete. The denial letter will state the name and title or position of the official responsible for the denial of such request. In such event, the requestor may file an agency appeal immediately, pursuant to § 5.55.

[44 FR 50287, Aug. 27, 1979, as amended at 48 FR 44542, Sept. 29, 1983; 50 FR 40006, Oct. 1, 1985; 51 FR 34604, Sept. 30, 1986]

§ 5.55 Appeal within FEMA of denial of request.

(a) A requestor denied access, in whole or in part, to FEMA records may appeal that decision within FEMA. All appeals should be addressed to the Headquarters FOIA Officer, Federal Emergency Management Agency, Washington, DC, 20472 regardless of whether the denial being appealed was made at Headquarters, in a field office, or by a Regional Director.

(b) An appeal must be received in the Headquarters FOIA Office no later than thirty calendar days after receipt by the requestor of the initial denial.

(c) An appeal must be in writing and should contain a brief statement of the reasons why the records should be released and enclose copies of the initial request and denial. The appeal letter should bear the legend, ''FREEDOM OF INFORMATION APPEAL,'' conspicuously marked on both the face of the appeal letter and on the envelope. FEMA has twenty workdays after the receipt of an appeal to make a determination with respect to such appeal. The twenty day time limit shall not begin to run until the appeal is received by the Headquarters FOIA Officer. Misdirected appeals should be promptly forwarded to that office.

(d) The Headquarters FOIA Officer will submit the appeal to the Deputy Director for final administrative determination.

(e) The Deputy Director shall be the deciding official on all appeals except in those cases in which the initial denial was made by him/her. If the Dep-

uty Director made the initial denial, the Director will be the deciding official on any appeal from that denial. In the absence of the Deputy Director, or in case of a vacancy in that office, the Director may designate another FEMA official to perform the Deputy's functions.

(f) If an appeal is filed in response to a tentative denial pending locating and/or examination of records, as described in § 5.53(c), FEMA will continue to search for and/or examine the requested records and will issue a response immediately upon completion of the search and/or examination. Such action in no way suspends the time for FEMA's response to the requestor's appeal which FEMA will continue to process regardless of the response under this paragraph.

(g) If a requestor files suit pending an agency appeal, FEMA nonetheless will continue to process the appeal, and will furnish a response within the twenty day time limit set out in paragraph (c) of this section.

(h) If, on appeal, the denial of the request for records is in whole or in part upheld, the Deputy Director will promptly furnish the requestor a copy of the ruling in writing within the twenty day time limit set out in paragraph (c) of this section except as provided in § 5.55. The notification letter shall contain:

(1) A brief description of the record or records requested;

(2) A statement of the legal basis for nondisclosure;

(3) A statement of the name and title or position of the official or officials responsible for the denial of the initial request as described in § 5.54 and the denial of the appeal as described in paragraph (f) of this section, and

(4) A statement of the requestor's rights of judicial review.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980; 50 FR 40006, Oct. 1, 1985]

§ 5.56 Extension of time limits.

In unusual circumstances as specified in this section, the time limits prescribed in §§ 5.52 and 5.55 may be extended by an official named in § 5.54(a) who will provide written notice to the requestor setting forth the reasons for such extension and the date on which a

determination is expected. Such notice will specify no date that would result in an extension of more than ten work days. In unusual circumstances, the Headquarters FOIA Officer may authorize more than one extension, divided between the initial request stage and the appeals stage, but in no event will the combined periods of extension exceed ten work days. As used in this section, ''unusual circumstances'' include only those circumstances where extension of time is reasonably necessary to the proper processing of the particular request. Examples include:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency or with a non-Federal source having a substantial interest in the determination of the request or among two or more components of FEMA having substantial subject matter interest therein.

§ 5.57 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Business information provided to FEMA by a business submitter shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information to the government. The term *submitter* includes, but is not

limited to, corporations, State governments, and foreign governments.

(b) *Notice to business submitters.* FEMA shall provide a submitter with prompt notice of receipt of a Freedom of Information Act request encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as provided in paragraph (g) of this section. The written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, FEMA shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial information;

(ii) FEMA has reason to believe that disclosure of the information could reasonably result in commercial or financial injury to the submitter; or

(iii) The information is subject to prior express commitment of confidentiality given by FEMA to the submitter.

(2) For confidential commercial information submitted to FEMA on or after January 1, 1988, FEMA shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) FEMA has reason to believe that disclosure of the information could reasonably result in commercial or financial injury to the submitter.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) Whenever possible, the submitter's claim of confidentiality shall be